

Richard Dannay (rxd@cll.com)
COWAN, LIEBOWITZ & LATMAN, P.C.
114 West 47th Street
New York, NY 10036-1525
(212) 790-9200
Attorneys For Defendants Dover Publications, Inc. and Theodore Menten

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
THE TEDDY BEARYS LTD, No. 1:18-cv-03436

Plaintiff,

ANSWER

-against-

DOVER PUBLICATIONS, INC.;
and THEODORE MENTEN,
Defendants.

----- X

Defendants DOVER PUBLICATIONS, INC. (“Dover”) and THEODORE
MENTEN (“Menten”), by their attorneys Cowan, Liebowitz & Latman, P.C., for their
Answer to the Complaint:

1. Admit that this action purports to be for copyright infringement, and deny
the other allegations in paragraph 1, including all of Plaintiff’s claims of copyright
infringement.

2. Deny knowledge or information sufficient to form a belief as to the truth of
the allegations in paragraph 2.

3. Deny knowledge or information sufficient to form a belief as to the truth of
the allegations in paragraph 3.

4. Deny knowledge or information sufficient to form a belief as to the truth of
the allegations in paragraph 4.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. For the accuracy and context of any alleged quotation from Menten's publication, Defendants refer the Court to the publication itself, and deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Deny the allegations in paragraph 8.

9. Deny the allegations in paragraph 9.

10. Deny the allegations in paragraph 10.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14.

15. Admit the allegations in paragraph 15.

16. Admit the allegations in paragraph 16.

17. Admit that this action purports to be for copyright infringement and Lanham Act violations, and deny knowledge or information sufficient to form a belief as to the truth of the other allegations in paragraph 17.

18. Because this action purports to be for copyright infringement and Lanham Act violations, Defendants do not contest subject matter jurisdiction over the federal claims, and deny knowledge or information sufficient to form a belief as to the truth of the other allegations in paragraph 18.

19. Defendants do not contest venue, alleged in paragraph 19.

20. Deny the allegations in paragraph 20.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.

22. Deny the allegations in paragraph 22, and refer the Court to Plaintiff's alleged work itself for its appearance.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. For the accuracy and context of any alleged references to Menten's publications, Defendants refer the Court to the publications themselves, and deny knowledge or information sufficient to form a belief as to the truth of the other allegations in paragraph 34.

35. Deny the allegations in paragraph 35.

36. Admit their publication of the work titled *Teddy Bear Illustrations*, refer the Court thereto for its appearance and content, and deny the other allegations in paragraph 36.

37. Admit their publication of the work titled *Teddy Bear Illustrations*, refer the Court thereto for its appearance and content, and deny the other allegations in paragraph 37.

38. Admit their publication of the work titled *Teddy Bear Illustrations*, refer the Court thereto for its appearance and content, and deny the other allegations in paragraph 38.

39. Deny the allegations in paragraph 39.

40. Deny the allegations in paragraph 40.

41. Deny the allegations in paragraph 41.

42. Deny the allegations in paragraph 42.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44.

45. Deny the allegations in paragraph 45.

46. Deny the allegations in paragraph 46.

47. Deny the allegations in paragraph 47.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48.

49. Deny the allegations in paragraph 49.

50. Admit that Ms. Scott and Dover have engaged in certain communications, which speak for themselves, and deny the other allegations in paragraph 50.

First Alleged Cause Of Action

51. Repeat paragraphs 1 through 50 of this Answer, in response to paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint states legal conclusions that Defendants are not required to respond to, and thus deny.

53. Paragraph 53 of the Complaint states legal conclusions that Defendants are not required to respond to, and thus deny.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57.

58. Deny the allegations in paragraph 58.

59. Deny the allegations in paragraph 59.

60. Deny the allegations in paragraph 60.

61. Deny the allegations in paragraph 61.

Second Alleged Cause Of Action

62. Repeat paragraphs 1 through 61 of this Answer, in response to paragraph 62 of the Complaint.

63. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63.

64. Deny the allegations in paragraph 64.

65. Deny the allegations in paragraph 65.

66. Deny the allegations in paragraph 66.

Third Alleged Cause Of Action

67. Repeat paragraphs 1 through 66 of this Answer, in response to paragraph 67 of the Complaint.

68. Refer the Court to *Teddy Bear Illustrations* for its content and context, and deny the other allegations in paragraph 68.

69. Deny the allegations in paragraph 69.

70. Deny the allegations in paragraph 70.

71. Deny the allegations in paragraph 71.

72. Deny the allegations in paragraph 72.

73. Deny the allegations in paragraph 73.

Fourth Alleged Cause Of Action

74. Repeat paragraphs 1 through 73 of this Answer, in response to paragraph 74 of the Complaint.

75. Deny the allegations in paragraph 75.

76. Deny the allegations in paragraph 76.

77. Deny the allegations in paragraph 77.

78. Deny the allegations in paragraph 78.

As to the Relief Requested

79. Defendants assert that Plaintiff is not entitled to any of the relief requested.

Affirmative And Other Defenses

80. The Complaint fails to state a claim on which relief can be granted.

81. Each of Plaintiff's claims is barred, in whole or in part, by the statute of limitations.

82. Each of Plaintiff's claims is barred, in whole or in part, by the doctrines of laches, estoppel, and waiver.

83. Defendants deny any access to Plaintiff's work, and Plaintiff cannot sustain its burden of proving access.

84. Defendants deny any actual copying of Plaintiff's work, and Plaintiff cannot sustain its burden of proving actual copying.

85. Defendants deny any actionable similarity of their book to Plaintiff's work, and Plaintiff cannot sustain its burden of proving actionable similarity.

86. Any use Plaintiff claims was made of its work is nonactionable as fair use under Section 107 of the Copyright Act, 17 U.S.C. § 107.

87. On information and belief, Plaintiff is not the owner of any valid copyright in the works it sues on, and thus lacks standing to sue.

88. On information and belief, the works Plaintiff sues on remain unpublished but, to the extent published, were first published before the effective date of the Berne Convention Implementation Act of 1988 and lacked proper copyright notice, and are in the public domain.

WHEREFORE, Defendants demand judgment that the Complaint be dismissed with prejudice and that they be awarded their full costs, including reasonable attorneys' fees, and be granted such other relief as the Court may deem just and proper.

**Dated: New York, New York
July 2, 2018**

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

**By: s/ Richard Dannay
Richard Dannay (rxid@cll.com)**

**114 West 47th Street
New York, NY 10036-1525
(212) 790-9200**

**Attorneys For Defendants Dover Publications,
Inc. and Theodore Menten**